

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

LEE M. BERGER and ALICE A. BERGER,  
Individually and on Behalf of All  
Other Persons Similarly Situated

Plaintiffs,

v.

CIVIL ACTION NO. 10-11583-NMG

BANK OF AMERICA, N.A., and  
BAC HOME LOANS SERVICING, L.P.,

Defendants.

**BANK OF AMERICA'S MOTION FOR SUMMARY JUDGMENT**

Defendant Bank of America, N.A. (“Bank of America”)<sup>1</sup> hereby respectfully moves this Court to enter summary judgment in favor of Bank of America. For the reasons stated in the accompanying memorandum of law, Plaintiff’s have no damages and no likelihood of being harmed in the future, as they have fully resolved their issue with insurance, and Bank of America’s practices have changed such that they cannot demonstrate any potential future harm. As such, their case must be dismissed as moot—there is no relief they can request of this Court that Bank of America has not already provided.

For this reason, Bank of America respectfully requests that it be granted summary judgment in its favor.

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<sup>1</sup> As of July 1, 2011, Bank of America, N.A. is the successor by merger to BAC Home Loans Servicing, LP. Therefore, no separate mention of the entity formerly known as BAC Home Loans Servicing, LP is required.

Dated: May 8, 2012

BANK OF AMERICA, N.A.; and BAC  
HOME LOANS SERVICING, L.P.,

By their attorneys,

/s/ Matthew G. Lindenbaum

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**LOCAL RULE 7.1(A)(2) CERTIFICATION  
AND CERTIFICATE OF SERVICE**

I, Matthew G. Lindenbaum, hereby certify that counsel for Defendants have conferred with counsel for Plaintiffs in an effort to resolve or narrow the issues presented in this motion prior to filing. The Parties were unable to reach agreement.

I further certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 8, 2012.

/s/ Matthew G. Lindenbaum

Dated: May 8, 2012